

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2
3 REBECCA A. SPRAITZAR,

4 Petitioner,

5
6 v.

7 ISLAND COUNTY,

8
9 Respondent.

10 And

11
12 FRANK LEETS and ANGELA LEETS,

13
14 Intervenor.

Case No. 08-2-0023

**ORDER ON ISLAND COUNTY'S
MOTION TO DISMISS**

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17 THIS Matter comes before the Board upon the motion of Island County to dismiss this
18 appeal.¹ Petitioner Spraitzar and Intervenor filed a brief in opposition to the motion.²

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20 The sole issue in this appeal, as stated in the Prehearing Order is this:

- 21 1. Did the County adoption of Ordinance C-87-07, PLG-017-07 fail to comply with the
22 requirements of RCW 36.70A.140 because it did not provide effective notice for early
23 and continuous public participation?
24

25 The County argues this appeal should be dismissed as there are no genuine issues of
26 material fact that Island County failed to comply with RCW 36.70A.140. In support of its
27 motion, the County details how it provided notice of the Planning Commission's and Board
28 of County Commissioners' consideration of comprehensive plan annual review amendment
29 requests, including "review of Accident Potential Zones surrounding NAS Whidbey".
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¹ Island County's Motion to Dismiss, July 7, 2008

² Petitioner Spraitzar's and Intervenor Leets Opposition to Island County's Motion to Dismiss, July 17, 2008.
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1 In response, the Petitioner and Intervenors argue the County's notice/public participation
2 efforts failed to comply with the GMA. Furthermore, they argue that under the standard of
3 WAC 242-02-530(6), this matter should not be decided by motion, but instead be carried
4 forward to the Hearing on the Merits.

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6 WAC 242-02-530(6) provides:

7 (6) Any party may bring a motion for the board to decide a challenge to compliance
8 with the notice and public participation requirements of the act raised in the petition
9 for review, **provided that the evidence relevant to the challenge is limited**. If such
10 a motion is timely brought, the presiding officer or the board shall determine whether
11 to decide the notice and public participation issue(s) on motion or whether to
12 continue those issues to the hearing on the merits. (*emphasis added*)

13 In this case, it appears from the allegations contained in Petitioner's/Intervenors' briefing
14 that there is a large body of evidence in this case, some of which is still being transcribed
15 and reviewed.³ Because the evidence relevant to the challenge is far from limited, the
16 Board determines it will continue this issue to the Hearing on the Merits.

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18 Having reviewed the briefs and supporting exhibits provided by the parties, the Board
19 concludes that there are sufficient issues regarding the nature of the County's public notice
20 pertaining to the development and adoption of Ordinance C-87-07 (concerning Accident
21 Prevention Zones) for this matter to be decided only after the Hearing on the Merits.

22 ORDER

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24 For the foregoing reasons, Island County's Motion to Dismiss is **DENIED**.

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26 The Hearing on the Merits will be heard on September 25, 2008, as scheduled.

27 The parties need not resubmit exhibits in their hearing briefs that have already been
28 submitted as attachments to their briefs on the Motion to Dismiss. However, the Board
29 notes that the newspaper notices provided by the County were very difficult to read, and the
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³ Id. at 24.
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1 Board requests the County to provide a more legible copy or transcription of those notices
2 with its briefing for the Hearing on the Merits.

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4 DATED this 24th day of July, 2008.

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6 _____
7 James McNamara, Board Member

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10 Holly Gadbaw, Board Member

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13 William Roehl, Board Member

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